is not included in the definition of "tenant" and contends that she does not automatically become a tenant on the death of her husband, as is the case in England, and that she can only become a tenant by devolution or by a new contractual tenancy.

Mr. Smith further contends that section 16(c) will protect the widow only in the following cases:

(i) if she has become a tenant and is residing in the premises, in which case she will claim protection as a tenant.

(2) if she has not become a tenant, then she will be protected if the tenancy of her husband is still in existence and has not been terminated and she is residing in the premises, in which case she will claim protection as a member of his family.

Mr. Smith submits that as the widow has not become a tenant by devolution and the tenancy has already been terminated the widow is not protected.

The whole case appears to me to resolve itself upon this question: Did the legislature intend to protect the widow who continues to reside in the premises after the death of her husband, the tenant?

In the definition of "members of his family" it is to be noted that the words "widow", "widower" and "legal personal representative" are used. To my mind that clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises. There is no doubt whatsoever that the legislature intended to protect the widow. I am confirmed in that view by a consideration of the judgment of Mr. Justice Jobling in the Federation of Malaya case of *B.T. Hassan* v. *G.A. Scully*. (1)

In my view the judgment of the learned District Judge is correct in that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

This appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Director of Legal Aid.*

VEERAPILLAI v. OOI SWEE HOE

[A.C.J. (Rigby J.) June 16, 1961]

[Penang — Civil Appeal No. 3 of 1961]

Landlord and tenant — Control of Rent Ordinance, 1956, ss.2, 12(1)(l) and (m) — Whether erection of houses of temporary character on vacant land protected — "Premises comprised in a tenancy."

The appellant was many years ago let into possession of vacant land by the respondent's predecessor in title. With the permission of the latter, the appellant had erected thereon houses of a temporary character. In an action by the respondent for the recovery of possession of the land, the President in the Court below gave judgment for the respondent.

On appeal,

Held: (1) the words "premises comprised in a tenancy" must mean and include all those premises included in the tenancy as at the date of the application for a Court Order for possession, and are not to be construed as being confined to premises which were originally the subject matter of the tenancy;

(2) buildings of a temporary character erected upon land which was originally let as vacant land are protected under the Control of Rent Ordinance by virtue of the provisions of section 12(1)(*l*) of the Ordinance;

(3) as the premises in question were subject to the Control of Rent Ordinance and as the respondent had taken none of the steps required of him in accordance with section 12(1)(*l*) and (*m*) of the Ordinance as a condition precedent to his application for recovery of possession of his land, the appeal was allowed.

Cases referred to:—

(1) *Evelyn Saw Hee Li* v. *Gan Tit Sun* [1959] M.L.J. 146.

(2) *Mayor Singh* v. *Lau Geok Swee* [1960] M.L.J. 285.

(3) *Chua Sai Ngoh* v. *Beh Ai Meng* [1955] M.L.J. 167.

(4) *Re Moore, Moore* v. *Bigg* [1906] 1 Ch. 789.

(5) *A.L.M.M. Muthukaruppan Chettiar* v. *Haji Ibrahim* [1941] M.L.J. 150.

(6) *Minet* v. *Leman*, 50 E.R. 606.

(7) *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648.

CIVIL APPEAL.

R. D. Hume for the appellant.

S. Thillaimuthu for the respondent.

Rigby J.: This is an appeal from a decision of the learned President of the Sessions Court granting to the respondent, the plaintiff in that action, an Order for the recovery of possession of a piece of land on which the appellant had built two houses. The respondent had recently purchased the land from its previous owner. The statement of claim averred — and the allegation was not specifically traversed — that the houses were premises of a temporary character. It would appear that the appellant many years ago had leased the land, as vacant land, from the previous owner and had been paying ground rent of $1 per month. During the period of his occupancy of the land he had, according to the statement of defence, with the consent of the owner of the land, erected these two houses on the land for the occupancy of himself and his family.

The learned President held that the parties were bound by their pleadings and there was no denial by the present appellant that the houses were of a temporary character. He held, in substance, that the houses were buildings of a temporary character and, following the decisions of this Court in *Evelyn Saw Hee Li* v. *Gan Tit Sun* (1) and *Mayor Singh* v. *Lau Geok Swee* (2), that they were not protected by the Control of Rent Ordinance, 1956, and that the respondent was entitled to an Order for recovery of possession — due notice to quit having, of course, been properly given.

Mr. Hume, for the appellant, now contends that the houses, even as buildings of a temporary character were in fact protected by the Control of Rent Ordinance and that the two decisions of this Court, to which I have referred and upon which the learned President clearly relied, were bad in law.

I am glad of an opportunity to refer to the *Evelyn Saw Hee Li case* since I am of the opinion that certain *dicta* I there expressed went too far. I held that having regard to the definition of "premises" as contained in section 2 of the Control of Rent Ordinance, 1956, land, *qua* land, did not come within the definition of "premises" and therefore — to quote from the words of the judgment itself — "if a person chooses to take a lease of a piece of land and builds a house on it, whether it be with or without the consent of the owner of the land, he cannot thereafter avail himself of the protection of this Ordinance as it now stands." In that context I think a clear distinction must be drawn between buildings of a temporary character, as known and accepted in this country (see the case of *Chua Sai Ngoh* v. *Beh Ai Meng* [3]) and houses of a permanent character which become fixtures to the land and accordingly form part of the realty. Fixtures become part of the land immediately upon their annexation to the soil and their ownership becomes vested at once in the owner of the land upon such annexation. Section 12(1) of the Ordinance provides that:—

> " No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except....."

It is important to observe that the words used in the section are "comprised in a tenancy" and not "the subject matter of a tenancy." I think the words "premises comprised in a tenancy" must mean and include all those premises included in the tenancy as at the date of its determination or as at the date of the application for a Court Order for possession, and are not to be construed as being confined to premises which were originally the subject matter of the tenancy. (See, by analogy, the interpretation put by the Court on the words "comprised in the settlement" in the case of *Re Moore, Moore* v. *Bigg* [4]). If that be the true construction to be placed upon the words "premises comprised in a tenancy" then it must follow that where there has been a lease granted by a landlord of vacant land and a dwelling house of a permanent character (which by virtue of its permanency attaches to the realty and becomes from the moment of its erection the absolute property of the landlord) has been built upon it with the consent (or, perhaps, even without the consent) of the landlord the "premises comprised in the tenancy" at the time of its determination or application to the Court for an order for recovery are premises within the definition of that word as contained in section 2 of the Ordinance, and both the house and the land upon which it is built are covered by the definition of "premises" and accordingly protected by the Control of Rent Ordinance. To that extent, the passage to which I have referred in my judgment in the *Evelyn Saw Hee Li case* must be modified in so far as houses of a permanent character are concerned.

But Mr. Hume seeks to go further, and he contends that upon a true construction of the Ordinance, and particularly bearing in mind the provisions of section 12(1)(*l*), it matters not whether the house subsequently built upon the land originally let as vacant land is a house of a permanent or a temporary character, and it is of no consequence whether it was built with or without the consent of the owner of the land. He submits that in all such cases the lessee of the land, originally let as vacant land and upon which the lessee, with or without the permission of his landlord, has built a house whether of a temporary or permanent character, is protected by virtue of the provisions of the Control of Rent Ordinance. His argument is based upon a consideration of the history and purpose of the Control of Rent Ordinances and particularly upon the definition of "premises" as coming within the protection and control of those Ordinances.

The object of all the control of rent legislation since its inception, as the very name implies, was to attempt to remedy the difficulties created after the outbreak of war by an ever growing population faced with an acute shortage of accommodation at a time when building development had, of necessity, been cut down to a minimum. The legislature sought to provide some security of tenure for the occupants of dwelling houses and to protect them against rapacious landlords by preventing an increase of their rents by more than a permitted amount above a basic figure defined in the legislation as the "standard rent."

The original Ordinance No. 35 of 1939 gave the widest possible definition to "premises" protected by the Ordinance, and section 8 of that Ordinance provided that, subject only to an application for ejectment for non-payment of rent where rent had been in arrears for 14 days after it had become due, no landlord could, without the permission of the Rent Board, eject or apply to any Court for an order for ejectment of any tenant or sub-tenant from any premises to which the Ordinance applied. In the case of *A.L.M.M. Muthukaruppan Chettiar* v. *Haji Ibrahim*, [5] a landlord sued for the recovery of a piece of land let by him to the defendant. Subsequent to the lease the defendant built an attap house or hut upon the land. The house or hut was admittedly not a fixture. In defence of the action the defendant contended that the house or hut was "premises" within the definition of the 1939 Ordinance and he was, therefore, protected under that Ordinance. The Magistrate held that while it was true that mere land was not "premises" within the definition of the Ordinance, yet if the

landlord sought to eject a tenant from land on which he was living in a dwelling house which came within the definition of "premises," it would be a necessary consequence of his ejectment from the land that the tenant would be ejected from his house and, therefore, section 8 of the Ordinance applied. On appeal, the High Court rejected that argument and held that it was a simple action for the recovery of land. The fact that the defendant had a chattel upon the land, in the form of a movable house, was irrelevant. Land was not "premises" within the meaning of the Ordinance. The plaintiff had not applied for the ejectment of his tenant from "premises" within the meaning of the Ordinance, but simply asked for recovery of possession of his piece of land then in the occupation of the defendant. The defendant was perfectly entitled to remove his house which was not a fixture, but the landlord was entitled to succeed in his action for recovery of the land. To remedy this position and to protect the owners of movable houses, the definition of "premises" in the principal Ordinance was amended by Ordinance No. 40 of 1940, with retrospective effect, to include "the land on which any movable building falling within the definition of premises stands . . ."

The Increase of Rent (Restriction) Ordinance, 1939, was itself repealed and replaced by the Control of Rent Ordinance, No. 6 of 1948. That Ordinance contained an entirely different definition of "premises," but it included within that definition "any land, outbuildings and appurtenances occupied therewith," (i.e. occupied with the dwelling houses, flat or other building used for human habitation). Mr. Hume contended that the particular position of occupants of movable houses of a temporary character built on land originally let as vacant land was expressly protected, not by any reference to their category within the definition of the word "premises," but by the inclusion in the Ordinance of a particular subsection which gave them that protection. Section 13 of the Ordinance provided that:—

> " No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases . . . ."

Paragraph (*l*) of section 13(1) enacts that:—

> " where the premises when originally let consisted of vacant land, and there has since been erected thereon a building or buildings of a temporary character, and such premises are required by the owner for the erection of a building or buildings of a permanent character for which plans have been approved by the local authority:
>
> Provided that the Court may stay or suspend the execution of the order or judgment or postpone the date of possession for such period and subject to such conditions, if any, as it thinks fit."

Mr. Hume therefore contended that it was quite clear that the express protection given to the occupants of temporary buildings built upon land originally let as vacant land as provided by the 1940 amendment to the 1939 Ordinance then under repeal, was safeguarded not by any provision in the general definition of "premises" as contained in the new 1948 Ordinance but expressly covered by a particular section in the body of the Ordinance itself. The definition of "premises" as contained in the principal (1948) Ordinance was itself amended by Ordinance No. 61 of 1949. That amendment, in addition to widening the nature and category of buildings coming within the definition of "premises," also added the words "and includes any land whereon any such building is or has been erected with the consent of the landlord, but does not include . . . ." and then certain specified exceptions are stated. Mr. Hume contended that the words "and includes any land whereon any such building is or has been erected with the consent of the landlord" were superfluous and unnecessary and added only *ex abundanti cautela*, since the position of persons who had built upon land already let to them as vacant land was already protected by section 13(1)(*l*). Assuming that argument for a moment to be correct, I think the effect of these additional words was to protect only those persons who had erected buildings of a temporary character upon the vacant land with the consent of the landlord. It removed, and rightly removed, the protection from those who had so built without the knowledge and consent of the owner of the land.

The 1948 Control of Rent Ordinance was, in turn, repealed and replaced by Ordinance No. 2 of 1956. That Ordinance reproduces in its entirety the definition of "premises" as contained in the 1949 amendment to the 1948 Ordinance, save that instead of the words "and includes any land whereon any such building is or has been erected with the consent of the landlord . . ." it reverts to the original words contained in the principal (1948) Ordinance and includes within the definition of "premises" "any land, outbuildings and appurtenances occupied therewith" (i.e. occupied with the various types or categories of buildings coming within the definition of "premises"). As I pointed out in the *Evelyn Saw Hee Li case*, the effect of the presumably deliberate omission in the new 1956 Ordinance to include in the definition of "premises" the 1949 amendment that "premises" included "any land whereon any such building is or has been erected with the consent of the landlord" and the reversion to the original 1948 definition that "premises" meant the types or categories of buildings therein stated "and . . . . . any land . . .. occupied therewith" seemed to me clearly to show that it was the intention of the legislature to exclude from the protection of the new Ordinance land originally let as vacant land on which buildings had subsequently been erected with the consent of the landlord. However, the difficulty about that interpretation, as I then recognised, was that it failed to give any effect whatsoever — indeed, it rendered it meaningless — to section 12(1)(*l*) of the 1956 Ordinance which is identical with section 13(1)(*l*) of the 1948 Ordinance, and which expressly deals with the position of "premises" originally let as

vacant land upon which buildings of a temporary character have since been erected. Mr. Hume argued with considerable force that having regard to the general intention of this legislation which is to protect the tenant, there was never any intention in the 1956 Ordinance to take away the protection conferred by the earlier legislation upon tenants who had erected houses upon land originally let to them as vacant land. He argued that if that had been the intention, then such buildings of a temporary character built upon land originally let as vacant land, would have been included in the specified exceptions expressly stated to be excluded from the definition of "premises". Finally, in support of his argument, he contends that some meaning must be given to the clear words of section 12(1)(*l*) reproducing, as they do, section 13(1)(*l*) of the 1948 Ordinance.

With considerable reluctance, I have come to the conclusion that Mr. Hume's argument is correct. The general principle of the construction of statutes is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares and that it will not alter its previous policy without expressing its intention with irresistible clearness. (See *Maxwell on Interpretation of Statutes*, 10th Edition, page 82).

> "The general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched." (*Per* Sir John Romilly M.R. in *Minet* v. *Leman* [6] and adopted by Lord Goddard C.J. in *National Assistance Board* v. *Wilkinson*. [7]

Again, a further canon of construction is that where a general intention is expressed, and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general one. (*Maxwell on Interpretation of Statutes*, 10th Edition, page 172).

Bearing in mind:—

(a) the avowed object of rent control legislation;

(b) the amendment to the original 1939 Ordinance to include within the definition of "premises" the land on which any "movable building falling within the definition of premises stands" and to give retrospective effect to that amendment;

(c) the provisions of section 13(1)(*l*) in the 1948 Ordinance and the 1949 amendment of the definition of "premises" — made, as would seem, *ex abundanti cautela* — to include within that definition "land whereon any such building is or has been erected with the consent of the landlord"; and

(d) the reproduction, in its entirety, of section 13(1)(*l*) of the 1948 Ordinance as section 12(1)(*l*) of the 1956 Ordinance,

I have reluctantly come to the conclusion that Mr. Hume's argument is correct and that buildings of a temporary character erected upon land which was originally let as vacant land, are protected under the Control of Rent Ordinance by virtue of the provisions of section 12(1)(*l*) of the Ordinance.

For the reasons which I have earlier expressed in this judgment, where land is originally let as vacant land and buildings of a permanent character, annexed to the land, are subsequently erected, such buildings form part of the realty and come within the definition of "premises comprised in a tenancy" for the purposes of an application under section 12 of the Control of Rent Ordinance. To that extent I am of the opinion that the view I expressed in the *Evelyn Saw Hee Li case*, and to which I have earlier adverted in this judgment, requires modification.

But I have reluctantly come to the conclusion that my judgments in both the *Evelyn Saw Hee Li case* and the *Mayor Singh case* were wrong, in that in view of the arguments advanced before me by Mr. Hume I am now of the opinion, and I so hold, that where land is originally let as vacant land and buildings of a temporary character are subsequently erected thereon, such buildings are protected under the Control of Rent Ordinance by virtue of section 12(1)(*l*) of that Ordinance. My reluctance in arriving at this conclusion is in no way due to the fact of having to reverse my earlier decisions, but solely due to what seems to me the wholly inequitable implication that may well arise from this decision. Under the 1948 Ordinance, by virtue of the definition of "premises" as amended in 1949. it was only in cases where the building had been subsequently erected. with the consent of the landlord, on land originally let as vacant land, that the tenant might claim the protection of the Ordinance in accordance with the provisions of section 13(1)(*l*). Now that those words have been omitted from the definition of "premises," it would seem that where the premises have been originally let as vacant land the tenant, even without the consent of the landlord can build a house of a temporary character thereon and thereafter invoke the protection of the Control of Rent Ordinance. The wheel has indeed turned its full circle and one must wonder whether the time has not come when the unfortunate landlord requires some protection against his groundtenant.

Reverting to the facts of this case it is clear that, for the reasons I have given, the premises were subject to the Control of Rent Ordinance and the unfortunate landlord had taken none of the steps required of him in accordance with section 12(1)(*l*) and (*m*) of the Ordinance as a condition precedent to his application for recovery of possession of his land.

With considerable regret I must accordingly allow this appeal with costs, and set aside the judgment and order of the learned President.

In view of the practical importance of the principles involved and the serious effect that this decision may have upon owners of property, I can only hope that this case may proceed to a higher Court, so that an authoritative decision may be obtained and the law clarified on the important issues involved.

Order accordingly.

Solicitors: *Triptipal Singh; S. Thillaimuthu.*